

proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Councils will be notified in writing of the reasons for the non-concurrence.

(iv) Framework actions can be taken only in the case where both Councils approve the proposed measure.

(b) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 90720198-9198-01; I.D. 070799B]

RIN 0648-AM36

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages, Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to separate shortraker rockfish and rougheye rockfish (SR/RE) from the aggregated rockfish bycatch species group and reduce maximum retainable bycatch (MRB) percentages for SR/RE in the Eastern Regulatory Area (ERA) of the Gulf of Alaska (GOA) groundfish fisheries. This action is necessary to slow the harvest rate of SR/RE thereby reducing the potential for overfishing. This action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP).

DATES: Comments must be received at the following address by September 2, 1999.

ADDRESSES: Comments may be sent to Susan Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental

Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907-586-7228.

FOR FURTHER INFORMATION CONTACT:

Shane Capron, 907-586-7228 or shane.capron@noaa.gov.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 600 and 679.

Regulations at 50 CFR 679.20(e) establish MRB percentages for groundfish species or species groups that are closed to directed fishing. The MRB amount is calculated as a percentage of the species on bycatch status relative to the amount of other species retained on board the vessel that are open for directed fishing. MRB percentages serve as a management tool to slow down the harvest rates of non-target species by limiting the amount that can be retained on board a vessel. By not placing a species on "prohibited" status, thereby prohibiting all retention, MRBs also serve to minimize regulatory discard of non-target species when they are taken incidental to other directed fisheries. MRB percentages reflect a balance between slowing harvest rates and minimizing the potential for undesirable discard. Although directed fishing for a species or species group may be prohibited under 50 CFR 679.20(d)(1)(iii), fishermen can "top off" their retained catch with these species up to the MRB amount by deliberately targeting the bycatch species.

In October 1998, the Council requested NMFS to initiate an analysis for a regulatory amendment to reduce the MRB percentages for SR/RE. Reducing the MRB percentages is needed to slow the harvest rates of SR/RE in the groundfish fisheries, thereby reducing the potential for overfishing and minimizing industry incentives to "top off" retained catch with SR/RE. Based on the analysis presented to the Council at its meeting in April 1999, the Council recommended that SR/RE be separated from the aggregated rockfish bycatch species group in the ERA of the GOA for the deep-water complex only. In addition, the Council recommended that the MRB percentages for SR/RE be

reduced to 7 percent relative to deep-water complex species in the ERA (primarily Pacific ocean perch (POP) and sablefish) and remain at 5 percent (in the aggregated rockfish category GOA-wide) relative to shallow-water complex species. The MRB percentage relative to arrowtooth flounder would remain at 0 percent. Further rationale for these MRB adjustments is discussed below.

Separation of SR/RE From Aggregated Rockfish

MRB percentages are established for aggregate rockfish species that are closed to directed fishing. Rockfish species were aggregated because of concerns that separate MRB percentages for each rockfish species category would increase the overall amount of rockfish that could be retained and increase incentives to vessel operators to "top off" their retained catch of target species with rockfish. As part of the aggregate rockfish MRB, the combined amounts of rockfish on bycatch status must not exceed specified percentages of other retained species that are open to directed fishing. These percentages are 15 percent relative to deep-water complex species (other rockfish species, sablefish, Greenland turbot, and flathead sole) and 5 percent relative to shallow-water complex species (Atka mackerel, pollock, Pacific cod, yellowfin sole, rock sole, "other flatfish," squid, and other species).

SR/RE are highly valued, but amounts available to the commercial fisheries are limited by the relatively small amounts of total allowable catch (TAC), all of which are needed to support incidental catch needs in other groundfish fisheries. As a result, the directed fishery for SR/RE typically is closed at the beginning of the fishing year. Incidental catch amounts of SR/RE, however, can exceed the species TAC and approach its overfishing level. In 1998, the SR/RE incidental catch in the ERA trawl and hook-and-line fisheries (181 mt and 554 mt, respectively) exceeded the acceptable biological catch (ABC) and caused overfishing concerns. This resulted in SR/RE being placed on prohibited species status on October 1, 1998. In this case, closure of any fishery, including the individual fishing quota fisheries for sablefish and halibut, that could have incidental catches of SR/RE was a possibility; SR/RE bycatch did not reach the overfishing level and those fisheries remained open.

For these reasons, NMFS proposes to remove SR/RE from the aggregated rockfish bycatch species group and establish a SR/RE bycatch species group for the ERA of the GOA.

Reduction of the SR/RE MRB Percentages

The majority of SR/RE bycatch is taken in the POP and sablefish fisheries. Based on data reported by the fishing industry since 1995, the amount of retained SR/RE bycatch in the rockfish fishery has ranged from 78 to 91 percent. During the same time period, the retained amount of SR/RE in the hook-and-line sablefish fishery relative to other retained catch has ranged from 51 to 69 percent.

Analyses of 1996–1998 observer data in the GOA fisheries indicate that most SR/RE bycatch is taken in the minority of hauls. In the POP fishery, the average bycatch rate for SR/RE from 1996 through 1998 was only 3.3 percent. The average incidental catch rate for the hook-and-line sablefish fishery for the same time period was only 3.1 percent. However, about 50 percent of the SR/RE incidental catch was associated with hauls that had SR/RE as the majority of the catch.

To the extent that these high-bycatch hauls represent “topping off,” a reduction in MRB percentages would limit this activity and reduce the risk of approaching the overfishing level for SR/RE stocks. The proposed MRB percentages, however, remain high enough to prevent an increase in regulatory discards.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), determined that this rule is necessary for the conservation and management of the groundfish fisheries of the GOA. The Regional Administrator also determined that this proposed rule is consistent with the Magnuson-Stevens Act and other applicable law.

This action has been determined to be not significant for purposes of E.O. 12866. No new reporting,

recordkeeping, or compliance requirements are imposed by this rule.

NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Currently, insufficient quantitative economic information exists on the affected fishery to determine the economic significance of this action. In the absence of such quantitative social and economic data, a qualitative IRFA was conducted to comply with the Regulatory Flexibility Act. The following summarizes the extent to which this rule is expected to adversely impact small entities and the alternatives considered.

This proposed action is being considered because harvest of SR/RE has significantly exceeded the TAC in the ERA of the GOA in each of the last 4 years. This action could have direct effects on 138 fishing vessels. In 1998, while participating in the rockfish fisheries, 23 trawl catcher vessels and 17 catcher/processors accounted for 772 mt of SR/RE harvest in the GOA (roughly 45 percent of the total harvest of SR/RE). Also in 1998, 484 hook-and-line catcher vessels harvested 710 mt of SR/RE while participating in the sablefish fishery. Of the total 1,482 mt of SR/RE harvested by these two sectors, only 1,064 mt was actually retained (about 72 percent of the total catch amount). About 50 percent of the SR/RE harvested was in SR/RE directed hauls. These hauls, composed primarily of SR/RE, are likely to be “top off” hauls, some of which would no longer be available to the fishery in the ERA of the GOA given the reduced ability to “top off” at historic levels. Any marginal loss in the short-term due to forgone catch of SR/RE would be offset by the long-term viability of the fishery while harvesting

at maximum acceptable biological levels.

The alternative of reducing the MRB for SR/RE in the ERA of the GOA was found to be the least restrictive on small entities while maximizing the harvest of SR/RE within the TAC amount. Under the status quo alternative, fishing mortality of SR/RE would continue at levels above the ABC and would likely cause adverse modification to the fishery resulting in reduced stocks; therefore the alternative was rejected. The alternative of reducing the MRB in all areas of the GOA also was rejected because it was too restrictive on entities fishing in areas that have not exceeded acceptable harvest amounts within the last 3 years.

This proposed rule does not contain reporting, recordkeeping, or compliance requirements and there are no relevant Federal rules which may duplicate, overlap, or conflict with this proposed rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 27, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In part 679, Table 10 to Part 679—Gulf of Alaska Retainable Percentages is revised to read as follows:

TABLE 10 TO PART 679—GULF OF ALASKA RETAINABLE PERCENTAGES
[Incidental Catch Species¹]

	Pollock	Pacific cod	Deep flatfish	Rex sole	Flat-head sole	Shallow flatfish	Arrow-tooth	Sablefish	Aggregated rockfish ²	SR/RE ERA ³	DSR SEO ⁴	Atka mackerel	Aggregated forage fish ⁵	Other species
Basis Species: ¹														
Pollock	⁶ na	20	20	20	20	20	35	1	5	⁶ na	10	20	2	20
Pacific cod	20	⁶ na	20	20	20	20	35	1	5	⁶ na	10	20	2	20
Deep flatfish	20	20	⁶ na	20	20	20	35	7	15	7	1	20	2	20
Rex sole	20	20	20	⁶ na	20	20	35	7	15	7	1	20	2	20
Flathead sole	20	20	20	20	⁶ na	20	35	7	15	7	1	20	2	20
Shallow flatfish	20	20	20	20	20	⁶ na	35	1	5	⁶ na	10	20	2	20
Arrowtooth	5	5	0	0	0	0	⁶ na	0	0	0	0	0	2	0
Sablefish	20	20	20	20	20	20	35	⁶ na	15	7	1	20	2	20
Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Other rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
DSR-SEEO	20	20	20	20	20	20	35	7	15	7	⁶ na	20	2	20
Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Atka mackerel	20	20	20	20	20	20	35	1	5	⁶ na	10	⁶ na	2	20
Other species	20	20	20	20	20	20	35	1	5	⁶ na	10	20	2	⁶ na
Aggregated amount of non-groundfish species	20	20	20	20	20	20	35	1	5	⁶ na	10	20	2	20

¹ For definition of species, see Table 1 of the GOA groundfish specifications.

² Aggregated rockfish means rockfish defined at § 679.2 except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category and in the Eastern Regulatory Area where shortraker/rougheye (SR/RE) rockfish is a separate category for the deep water complex only.

³ SR/RE ERA = shortraker/rougheye rockfish in the Eastern Regulatory Area.

⁴ SEO = Southeast Outside District.

⁵ Forage fish are defined at § 679.2.

⁶ na = not applicable.

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